

CJIS RECOMMENDATIONS

During this interim and last year's interim, the Criminal Code Reorganization Committee heard presentations by David Meyers, Criminal Justice Information Systems Integration Project Manager, and Retired Judge Michael Newmeister, Chairman of the Charge Code Consolidation Project. In their presentations, Mr. Meyers and Judge Newmeister identified a number of sections in the Iowa Criminal Code that the CJIS Advisory Council feels are ambiguous, duplicative, and confusing. The Council is hopeful that the Criminal Code Reorganization Committee could help resolve some of the issues they have identified. In an effort to assist the CJIS Advisory Council and clarify certain Criminal Code sections, the Criminal Code Reorganization Committee makes the following proposals:

1. Simple Misdemeanors, Scheduled and Non-Scheduled Violations

CJIS identified an issue regarding confusion as to class of crimes and the various methods of imposing penalties. (See ICIS Charge Code Issues)

Recommendation: Declare all non-scheduled and scheduled violations to be simple misdemeanors, unless otherwise provided and identify all Code sections where this issue arises and insert language stating that the violations are simple misdemeanors. (See Attachment A) Also, state in the Code that magistrates have jurisdiction over all simple misdemeanors, regardless of any potential fine amount.

2. 321.463 – Overweight vehicles

CJIS believes that the Iowa Code establishes a “clumsy” system to prosecute these violations (See ICIS Charge Code Issues)

Recommendation: Create two classes of overweight violations (simple and serious misdemeanors) and allow magistrates to try all overweight violations, even if a not guilty plea is filed.

3. 481A.135 – Enhanced penalties for violations of wildlife, fishing and hunting regulations.

CJIS indicates that prosecutors charge the enhanced penalties under the underlying Code sections. (See ICIS Charge Code Issues)

Recommendation: Insert language in the Code that violators will be prosecuted under 481A.135.

4. 321.208A – Operation in violation of out-of-service order – penalties

There is ambiguity in this section because there is no identification of classes of crime. (See Attachment B)

Recommendation: Insert language declaring that all violations of this section are simple misdemeanors

5. 321.236 – Powers of Local Authorities

Local law enforcement officers write citations citing this Code section for the violation. This Code section simply authorizes local authorities to write their own ordinances relating to motor vehicle and parking regulations (See ICIS Charge Code Issues).

Recommendation: Insert language that specifically states that any local violation shall be prosecuted under the local ordinance promulgated under the authority of 321.236.

6. Renumbering, etc. In response to concerns about the clarity of various Code sections, Leslie Hickey, Code Editor, has made some non-substantive changes so these sections will read more easily. Since these changes are non-substantive, the most logical vehicle for these proposals is a Code Editor's bill. (See Attachments C, D, and E.)

7. Fraudulent Practice – CJIS expressed concerns about the references throughout the Criminal Code to conduct considered to be a fraudulent practice (see ICIS Charge Code Issues). It is agreed that this is a cumbersome and confusing approach to charging someone with a fraudulent practice. However, in researching this issue and the various Code sections that would be implicated, it is believed that this is a long-term project that will take careful and thorough evaluation before any changes are recommended.

Draft---Attachment A

Sec. ____ . Section 321.1, subsection 32, unnumbered paragraph 1, Code 2009, is amended to read as follows:

"Implement of husbandry" means a vehicle or special mobile equipment manufactured, designed, or reconstructed for agricultural purposes and, except for incidental uses, exclusively used in the conduct of agricultural operations. "Implements of husbandry" includes all-terrain vehicles operated in compliance with section 321.234A, subsection 1, paragraph "a", fence-line feeders, and vehicles used exclusively for the application of organic or inorganic plant food materials, organic agricultural limestone, or agricultural chemicals. ~~To be considered an implement of husbandry, a self-propelled implement of husbandry must be operated at speeds of thirty five miles per hour or less.~~ "Reconstructed" as used in this subsection means materially altered from the original construction by the removal, addition, or substitution of essential parts, new or used.

(Issuance of registration or title) Sec. ____ . Section 321.24, Code 2009, is amended by adding the following new subsection:

NEW SUBSECTION. 12. A person who violates this section commits a simple misdemeanor.

Sec. ____ . Section 321.95, Code 2009, is amended to read as follows:

321.95 RIGHT OF INSPECTION.

1. Peace officers shall have the authority to inspect any vehicle or component part in possession of a vehicle rebuilder, vehicle salvager, used vehicle parts dealer or any person licensed under chapter 322, or found upon the public highway or in any public garage, enclosure or property in which vehicles or component parts are kept for sale, storage, hire or repair and for that purpose may enter any such public garage, enclosure or property. Every vehicle rebuilder, vehicle salvager, used vehicle parts dealer, or any person licensed under chapter 322, or a person having used engines or transmissions which are component parts for sale shall keep an accurate and complete record of all vehicles demolished and of such component parts purchased or received for resale as component parts in the course of business. These records shall contain the name and address of the person from whom each such vehicle or component part was purchased or received and the date when the purchase or receipt occurred or the junking certificate if required for the vehicle. These records shall be open for inspection by any peace

officer at any time during normal business hours. Records required by this section shall be kept for at least three years after the transaction which they record.

2. A person who violates this section commits a simple misdemeanor.

Sec. _____. Section 321.96, Code 2009, is amended to read as follows:

321.96 PROHIBITED PLATES - CERTIFICATES.

1. A person shall not display or cause or permit to be displayed, or have in the person's possession, a vehicle identification number or component part number except as provided in this chapter, or a canceled, revoked, altered, or fictitious registration number plates, registration receipt, or certificate of title, as the same are respectively provided for in this chapter.

2. A person who violates this section commits a simple misdemeanor.

(Special truck violations) Sec. _____. Section 321.121, subsection 2, Code 2009, is amended to read as follows:

2. A person convicted ~~of or found by audit to be~~ using a motor vehicle registered as a special truck for any purpose other than permitted by section 321.1, subsection 76, ~~shall, in addition to any other penalty imposed by law, be~~ commits a simple misdemeanor. In addition, a person convicted of a violation of this subsection is required to pay regular annual motor vehicle registration fees for such motor vehicle.

(Truck and other vehicle fees) Sec. _____. Section 321.122, Code 2009, is amended by adding the following new subsection:

NEW SUBSECTION. 4. A person who violates this section commits a simple misdemeanor.

(Motorized bike violations) Sec. _____. Section 321.189, subsection 7, Code 2009, is amended by adding the following new paragraph:

NEW PARAGRAPH. e. A person who violates this subsection commits a simple misdemeanor

(Out-of-service order - penalties) Sec. _____. Section 321.208A, Code 2009, is amended by adding the following new subsection:

NEW SUBSECTION. A person who violates this section commits a simple misdemeanor.

Sec. _____. NEW SECTION. 321.234B IMPLEMENT OF HUSBANDRY--SPEED.

1. A self propelled implement of husbandry shall be operated at speeds less than thirty-five miles per hour.

2. An operator who violates this section commits a simple misdemeanor.

(Local authority prosecution) Sec. _____. Section 321.236, Code 2009, is amended by adding the following new subsection:

NEW SUBSECTION. 15. A violation of a local ordinance, rule, or regulation promulgated under the authority of this section shall be prosecuted under the local ordinance.

Sec. _____. Section 321.285, Code 2009, is amended by adding the following new subsection:

(Speed restrictions) NEW SUBSECTION. 8. A person who violates this section commits a simple misdemeanor.

Sec. _____. Section 321.371, Code 2009, is amended to read as follows:

321.371 CLEARING UP WRECKS.

1. Any person removing a wrecked or damaged vehicle from a highway shall remove any glass or other injurious substance dropped upon the highway from such vehicle.

2. A person who violates this section commits a simple misdemeanor.

(Required school bus construction) Sec. _____. Section 321.373, Code 2009, is amended by adding the following new subsection:

NEW SUBSECTION. 8. A person who violates this section commits a serious misdemeanor.

Sec. _____. Section 321.379, Code 2009, is amended to read as follows:

321.379 VIOLATIONS.

~~No~~A school board, individual, or organization shall not purchase, construct, or contract for use, to transport pupils to or from school, any school bus which does not comply with the minimum requirements of section 321.373 and any individual, or any member or officer of such board or organization who authorizes, the purchase, construction, or contract for any such bus not complying with these minimum requirements ~~shall be guilty of a misdemeanor punishable as provided in section 321.482~~ commits a simple misdemeanor.

Sec. _____. Section 321.406, Code 2009, is amended to read as follows:

321.406 COWL LAMPS.

1. Any motor vehicle may be shall not be equipped with not more than two side cowl or fender lamps which shall emit an amber or white light without glare.

2. A person who violates this subsection commits a simple misdemeanor.

Sec. ____ . Section 321.408, Code 2009, is amended to read as follows:

321.408 BACK-UP LAMPS.

~~Any~~ 1. A motor vehicle may shall be equipped with a back-up lamp either separately or in combination with another lamp, ~~except that no such~~

2. A back-up lamp shall not be continuously lighted when the motor vehicle is in forward motion.

3. A person who violates this section commits a simple misdemeanor .

(Adequacy of brakes) Sec. ____ . Section 321.431, Code 2009, is amended by adding the following new subsection:

NEW SUBSECTION. 6. A person who violates this section commits a simple misdemeanor.

Sec. ____ . Section 321.452, Code 2009, is amended to read as follows:

321.452 SCOPE AND EFFECT.

1. Except for offenses punishable under the provisions of section 321.463 it is a misdemeanor, punishable as provided in section 321.482, for any person to drive or move or for the owner to cause or knowingly permit to be driven or moved on any highway any vehicle or vehicles of a size or weight exceeding the limitations stated in this chapter, and the maximum size and weight of vehicles herein specified shall be lawful throughout this state, and local authorities shall have no power or authority to alter said limitations except as express authority may be granted in this chapter.

2. A person who violates this section commits a simple misdemeanor.

(Overweight trucks) Sec. ____ . Section 321.463, subsection 11, Code 2009, is amended by adding the following new paragraphs:

NEW PARAGRAPH. a. If the fine amount is less than or equal to five hundred and eight-five dollars the person commits a simple misdemeanor.

NEW PARAGRAPH. b. If the fine amount is greater than five hundred and eight-five dollars the person commits a serious misdemeanor.

Sec. ____ . Section 321.467, Code 2009, is amended to read as follows:

321.467 RETRACTABLE AXELS.

1. A vehicle which is a model year 1999 or later vehicle shall not operate on a highway of this state with a retractable axle unless the weight on the retractable axle can only be adjusted by means of a manual device located on the vehicle that is not accessible to the operator of the

vehicle during operation of the vehicle. However, the controls for raising and lowering the retractable axle may be accessible to the operator of the vehicle while the vehicle is in operation.

2. A person who violates this section commits a simple misdemeanor.

(Offenses by owners of a vehicle) Sec. _____. Section 321.484, Code 2009, is amended by adding the following new subsection:

NEW SUBSECTION. 3. A person who violates this section commits a simple misdemeanor.

Sec. _____. Section 321.487, Code 2009, is amended to read as follows:

321.487 VIOLATION OF PROMISE TO APPEAR.

1. Any person willfully violating a citation to appear in court given as provided in this chapter, is guilty of a misdemeanor, punishable as provided in section 321.482 regardless of the disposition of the charge upon which the person was cited. Venue shall be in the county where the defendant was to appear or in the county where the person resides.

2. An appearance in response to such citation may be made either in person or by counsel.

3. A person who violates this section commits a simple misdemeanor.

Sec. _____. Section 321E.11, Code 2009, is amended to read as follows:

321E.11 DAYLIGHT MOVEMENT ONLY--EXCEPTIONS--HOLIDAYS.

1. Movements by permit in accordance with this chapter shall be permitted only during the hours from thirty minutes prior to sunrise to thirty minutes following sunset unless the issuing authority determines that the movement can be better accomplished at another period of time because of traffic volume conditions or the vehicle subject to the permit has an overall length not to exceed one hundred feet, an overall width not to exceed eleven feet, and an overall height not to exceed fourteen feet, four inches, and the permit requires the vehicle to operate only on those highways designated by the department. Additional safety lighting and escorts may be required for movement at night.

2. Except as provided in section 321.457, no movement by permit shall be permitted on holidays, after twelve o'clock noon on days preceding holidays and holiday weekends, or special events when abnormally high traffic volumes can be expected. Such restrictions shall not be applicable to urban transit systems as defined in section

321.19, subsection 2. For the purposes of this chapter, holidays shall include Memorial Day, Independence Day, and Labor Day.

3. A person who violates this subsection commits a simple misdemeanor.

Sec. _____. Section 481A.135, Code 2009, is amended by adding the following new subsection:

NEW SUBSECTION. 5. An indictment or trial information for a violation requiring an enhanced penalty under this section shall specify the underlying violation committed by the person.

Sec. _____. Section 602.6405, subsection 1, Code 2009, is amended to read as follows:

1. Magistrates have jurisdiction of simple misdemeanors regardless of the amount of the fine, including traffic and ordinance violations, and preliminary hearings, search warrant proceedings, county and municipal infractions, and small claims. Magistrates have jurisdiction to determine the disposition of livestock or another animal, as provided in sections 717.5 and 717B.4, if the magistrate determines the value of the livestock or animal is less than ten thousand dollars. Magistrates have jurisdiction to exercise the powers specified in sections 556F.2 and 556F.12, and to hear complaints or preliminary informations, issue warrants, order arrests, make commitments, and take bail. Magistrates have jurisdiction over violations of section 123.49, subsection 2, paragraph "h". Magistrates who are admitted to the practice of law in this state have jurisdiction over all proceedings for the involuntary commitment, treatment, or hospitalization of individuals under chapters 125 and 229, except as otherwise provided under section 229.6A; nonlawyer magistrates have jurisdiction over emergency detention and hospitalization proceedings under sections 125.91 and 229.22. Magistrates have jurisdiction to conduct hearings authorized under section 809.4.

Attachment B

From: Zetta Pilch [zpilch@co.muscatine.ia.us]
Sent: Thursday, November 20, 2008 8:43 AM
To: Hickey, Leslie [LEGIS]; Engel, Cathy [LEGIS]
Cc: Newmeister, Michael J. [JB]; Nelson, Ann Marie [JB]
Subject: 321.208A

Leslie and Catherine:

Help! We're going through the last table (the 300's) and noticed that the above code section changed. The penalty went from a scheduled violation to a fine not less than....; which due to the level of the fine, would make it seem to be a serious misdemeanor for the first offense; and an aggravated misdemeanor for the 2nd or subsequent offense. But, there is no specific class addressed.

Additionally, there is now an employer provision; also an agg misd? And, will these be numbered paragraphs or unnumbered? (the legislative bill indicated para 1 for the driver – 1st and 2nd in one paragraph and para 2 for the employer). Any assistance you can provide would be appreciated.

Thank you.

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Attachment C

455B.191 PENALTIES - BURDEN OF PROOF.

1. As used in this section, "hazardous substance" means hazardous substance as defined in section 455B.381 or section 455B.411.

~~1-2.~~ Any person who violates any provision of part 1 of division III of this chapter or any permit, rule, standard, or order issued under part 1 of division III of this chapter shall be subject to a civil penalty not to exceed five thousand dollars for each day of such violation.

~~2-3.~~ a. Any person who negligently or knowingly does any of the following shall, upon conviction, be punished as provided in paragraphs b or c of this subsection:

~~(1) violates~~ Violates section 455B.183 or section 455B.186 or any condition or limitation included in any permit issued under section 455B.183, ~~or who negligently or knowingly introduces.~~

~~(2) Introduces~~ into a sewer system or into a publicly owned treatment works any pollutant or hazardous substance which the person knew or reasonably should have known could cause personal injury or property damage or, other than in compliance with all applicable federal and state requirements or permits, ~~negligently or knowingly causes.~~

~~(3) Causes~~ a treatment works to violate any water quality standard, effluent standard, pretreatment standard or condition of a permit issued to the treatment works pursuant to section 455B.183 ~~is guilty of a serious misdemeanor for a negligent violation and is guilty of an aggravated misdemeanor for a knowing violation.~~

~~b. (1) A conviction for a negligent violation is~~ A person who commits a negligent violation under this subsection is guilty of a serious misdemeanor punishable by a fine of not more than twenty-five thousand dollars for each day of violation or by imprisonment for not more than one year, or both, however, if

~~(2) If~~ the conviction is for a second or subsequent violation committed by a person under this subsection, the conviction is punishable by a fine of not more than fifty thousand dollars for each day of violation or by imprisonment for not more than two years, or both.

~~c. (1) A conviction for a~~ A person who commits a knowing violation is under this subsection is guilty of an aggravated misdemeanor punishable by a fine of not more than fifty thousand dollars for each day of violation or by

imprisonment for not more than two years, or both, ~~however, if.~~

(2) If the conviction is for a second or subsequent violation committed by a person under this subsection, the conviction is punishable by a fine of not more than one hundred thousand dollars for each day of violation or by imprisonment for not more than five years, or both.—~~As used in this section, "hazardous substance" means hazardous substance as defined in section 455B.381 or section 455B.411.~~

3.4. Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan or other document filed or required to be maintained under part 1 of division III of this chapter, or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required to be maintained under part 1 of division III of this chapter or by any permit, rule, regulation, or order issued under part 1 of division III of this chapter, shall upon conviction be punished by a fine of not more than ten thousand dollars or by imprisonment in the county jail for not more than six months or by both such fine and imprisonment.

4.5. The attorney general shall, at the request of the director with approval of the commission, institute any legal proceedings, including an action for an injunction or a temporary injunction, necessary to enforce the penalty provisions of part 1 of division III of this chapter or to obtain compliance with the provisions of part 1 of division III of this chapter or any rules promulgated or any provision of any permit issued under part 1 of division III of this chapter. In any such action, any previous findings of fact of the director or the commission after notice and hearing shall be conclusive if supported by substantial evidence in the record when the record is viewed as a whole.

5.6. In all proceedings with respect to any alleged violation of the provisions of this part 1 of division III or any rule established by the commission or the department, the burden of proof shall be upon the commission or the department except in an action for contempt as provided in section 455B.182.

6.7. If the attorney general has instituted legal proceedings in accordance with this section, all related issues which could otherwise be raised by the alleged violator in a proceeding for judicial review under section

455B.178 shall be raised in the legal proceedings instituted in accordance with this section.

Attachment D

716.5 CRIMINAL MISCHIEF IN THE THIRD DEGREE.

1. Criminal mischief is criminal mischief in the third degree if ~~the~~ any of the following apply:

a. The cost of replacing, repairing, or restoring the property so that is damaged, defaced, altered, or destroyed exceeds five hundred dollars, but does not exceed one thousand dollars, ~~or if the.~~

b. The property is a deed, will, commercial paper or any civil or criminal process or other instrument having legal effect, ~~or if the.~~

c. The act consists of rendering substantially less effective than before any light, signal, obstruction, barricade, or guard which has been placed or erected for the purpose of enclosing any unsafe or dangerous place or of alerting persons to an unsafe or dangerous condition. ~~Criminal mischief in the third degree is an aggravated misdemeanor.~~

~~A person commits criminal mischief in the third degree who does either of the following:~~

~~1. Intentionally~~

d. The person intentionally disinters human remains from a burial site without lawful authority.

~~2.e. Intentionally~~ The person intentionally disinters human remains that have state and national significance from an historical or scientific standpoint for the inspiration and benefit of the United States without the permission of the state archaeologist.

2. Criminal mischief in the third degree is an aggravated misdemeanor.

716.6 CRIMINAL MISCHIEF IN THE FOURTH AND FIFTH DEGREES.

1. Criminal mischief is criminal mischief in the fourth degree if the cost of replacing, repairing, or restoring the property so damaged, defaced, altered, or destroyed exceeds two hundred dollars, but does not exceed five hundred dollars. Criminal mischief in the fourth degree is a serious misdemeanor.

2. All criminal mischief which is not criminal mischief in the first degree, second degree, third degree, or fourth degree is criminal mischief in the fifth degree. Criminal mischief in the fifth degree is a simple misdemeanor.

Attachment E

728.15 TELEPHONE DISSEMINATION OF OBSCENE MATERIAL TO MINORS.

1. As used in this section, a "person" excludes any information-access service provider that merely provides transmission capacity without control over the content of the transmission.

~~2. A person shall not knowingly disseminate obscene material by the use of telephones or telephone facilities to a minor. A person who violates this subsection upon conviction is guilty of an aggravated misdemeanor. However, second and subsequent offenses of this subsection by a person who has been previously convicted of violating this subsection are class "D" felonies. As used in this subsection, a "person" excludes any information-access service provider that merely provides transmission capacity without control over the content of the transmission.~~

~~2.3. It shall be a defense in any prosecution for a violation of subsection 1 2 by a person who accused of knowingly disseminates disseminating obscene material by the use of telephones or telephone facilities to a minor that the defendant person accused has taken either of the following measures to restrict access to the obscene material:~~

~~a. Required The person accused has done all of the following:~~

~~(1) Required the person receiving the obscene material to use an authorized access or identification code, as provided by the information provider, before transmission of the obscene material begins, where the defendant has previously.~~

~~(2) Previously issued the code by mailing it to the applicant after taking reasonable measures to ascertain that the applicant was eighteen years of age or older and has established.~~

~~(3) Established a procedure to immediately cancel the code of any person after receiving notice, in writing or by telephone, that the code has been lost, stolen, or used by persons under the age of eighteen years or that the code is no longer desired.~~

~~b. Required The person accused has required payment by credit card before transmission of the obscene material.~~

~~3.4. Any list of applicants or recipients compiled or maintained by an information-access service provider for purposes of compliance with subsection 2 3 is confidential~~

and shall not be sold or otherwise disseminated except upon order of the court.

5. a. A violation of subsection 2 is an aggravated misdemeanor.

b. A violation of subsection 2 by a person who has been previously convicted of a violation of subsection 2 is a class "D" felony.